1914.

[FULL BENCH.]

Present: Lascelles C.J., Pereira J., and De Sampayo A.J.

JAMES *et al.* *v.* CAROLIS *et al.*

365—D. C. Negombo, 8,896.

Registration—Deed from intestate—Subsequent deed from heir—Priority.

A conveyed his land to B. After A's death, C, who was A's intestate heir, conveyed the same land to D. The deed in favour of D was registered before the deed in favour of B.

Held, that the deed in favour of B was void as against the subsequent deed in favour of D by reason of prior registration, as the two conveyances proceeded from the same source.

THIS case was reserved for agreement before a Bench of Three Judges by Wood Renton A.C.J. and De Sampayo A.J. The facts are set out in the judgment.

E. W. Jayewardene, for plaintiffs, respondents. [At the hearing before the Full Bench, counsel for respondents was heard first.]—The decision in *Punchirala v. Appuhamy* [1] is a direct authority on the point. The fact that the deed was executed in that case by the administrator does not make any difference, as an heir has a right to alienate his share even before administration (*Silva v. Silva* [2]). If there is any difference, the difference is in favour of an heir. The heir has the same position whether the estate is over Rs. 1,000 or under Rs. 1,000. Title does not vest in an administrator except for a limited purpose.

[De Sampayo A.J.—There must be an estate for the heir to sell.] The effect of the Registration Ordinance is that a man has title, in spite of the fact that he has sold a property, so as to give title to a subsequent purchaser who registers his deed first. *Warburton v. Loveland* [3] is an English authority which is binding on this Court.

Counsel also cited *Kanapathipillai v. Mohamadutamby Levai et el.*, [4] *Fonseka v. Fernando*, [5] *Hogg's Deeds and Registration in Australia 121*, *Desai's Indian Registration 113*, *Gauder v. Dissanayaka*, [6] *Silva v. Gomis*. [7]

Bawa, K.C. (with him *Zoysa*), for the defendants, appellants.—An heir does not succeed to every right of the deceased. If the heir

[1] *(1900) 7 N. L. R. 102.*
[2] *(1907) 10 N. L. R. 234.*
[3] *(1831) 2 Dow & Clark 481.*
[4] *(1912) 15 N. L. R. 177.*
[5] *(1912) 15 N. L. R. 491.*
[6] *4 Bal. 122.*
[7] *(1909) 1 Cur. L. R. 96.*

inherits he can sell, but he did not inherit here. An administrator is more than an heir; he carries on the personality of the deceased, which the heir does not.

[Pereira J.—Nothing that does not pass to the heir passes to the administrator.] The law makes him legal representative of the deceased.

Punchirala v. Appuhamy [1] is not an authority in the present case, as the deeds which come into competition here are the deeds from the deceased and from an heir (and not from an administrator). The deeds from the heir and from the deceased are not deeds coming from the same source.

Cur. adv. vult.

February 4, 1914. LASCELLES C.J.—

This appeal has been reserved for the opinion of the Collective Court on one only of the several points involved, namely, the respective priority of the plaintiffs' deed P 1 and the deed of donation D 8 in favour of the fourth defendant and Nonnohamy. For this purpose the facts of the case will be sufficiently stated as follows. Sanchi Appu and his wife Ungohamy were the original owners of the disputed property. They were married in community. Sanchi Appu predeceased his wife, who died about twelve years ago, leaving four children. Sirimalhamy, one of these children, by deed P 1 dated January 18, 1912, and registered January 22, 1912, conveyed her one-fourth share to the plaintiffs.

The plaintiffs' title to one-eighth, namely, the one-eighth which devolved on Sirimalhamy from her mother, is disputed on the ground that the latter by deed D 8 dated November 28, 1898, and registered April 7, 1912, had conveyed her half of the estate to the fourth defendant and Nonnohamy. It is not disputed that ordinarily the deed P 1 would be preferred on the ground of priority of registration. But it has been doubted whether P 1 and D 8 can be regarded as two conflicting deeds derived from the same source. It has been argued that Sirimalhamy, as an heiress of Ungohamy, did not fully represent her mother so as to carry on an unbroken line of title.

Counsel for the plaintiffs-respondents referred us to an elaborate exposition of the general principles underlying the Irish Registry Act (6 Anne ch. 2) in *Warburton v. Loveland.* [2] Making due allowance for the difference between the two systems as regards the effect or notice of the prior unregistered deed, these pinciples are generally applicable to the Ceylon Registration Ordinance. The Irish Act has for its principal aim and object the protection of the purchaser for valuable ionsideration. The scope and object of the Ceylon Ordinance is the same.

[1] *(1900) 7 N. L. R. 102.*

[2] *(1831) 2 Dow & Clark 481.*

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If an intending purchaser finds on the register no adverse deed affecting the property, he is placed in the same position, as regards his title to the land, as if no such deed in fact existed. On the other hand, the grantee under the prior unregistered deed is penalized for his failure to put his deed on the register. He is taken to have given out to the world at large that his deed did not exist, and is prohibited from setting it up against the registered deed of the subsequent purchaser for valuable consideration.

It was contended by the defendants-appellants' counsel, though I do not think that he placed much reliance on the point, that Sirimalhamy cannot be regarded as the heiress of her mother, as the latter by deed D 8 had alienated her share in the estate. But the fallacy of this reasoning is obvious. It assumes the validity of the deed D 8, which section 14 of the Land Registration Ordinance, No. 14 of 1891, declares shall be deemed invalid as against the plaintiffs' deed.

I confess to some difficulty in appreciating the argument, that because the plaintiffs purchased from an heir of the *proposoti*, their title is not derived from the *proposoti*. It is said that the heir does not fully represent the intestate, and that descent from an heir constitutes a break in the chain of title. If there were any question as to the competence of an heir to alienate immovable property without the assent or concurrence of the administrator, there would have been some ground for the contention. But all questions on this point have been set at rest by the decision of a Full Bench of this Court in *Silva v. Silva*. [1]

If, as is unquestionably the case, a deed by an heir to a purchaser transmits to the purchaser the title which the heir derived from his intestate, it follows that the deed is a sound link in the chain of the title. It is not less effective for the purpose of transmitting title than a deed from one purchaser to another purchaser. In *Punchirala v. Appuhamy* [2] this Court over-ruled the contention that, where there is a conveyance from an intestate and a subsequent conveyance from his administrator, these two conveyances do not proceed from the same source, and that therefore the Registration Ordinance does not apply. It was there held that an administrator represents, and his estate is in law identical with that of his intestate.

Now that it is settled that the heir can pass title without the concurrence of the administrator. I think it follows that the estate of the heir must be regarded as that of his intestate.

For the above reasons, I am of opinion that the plaintiffs' deed P 1 is entitled to priority over the defendants' deed D 8.

I understand that the members of the Court which originally heard the appeal were agreed that appeal No. 365 A should be dismissed.

As the decision of appeal No. 365B turns on the point discussed in this judgment, I would dismiss both appeals with costs.

[1] *(1907) 10 N. L. R. 234.*

[2] *(1900) 7 N. L. R. 102.*

PEREIRA J.—

In this case two questions arose for decision: (1) Whether the third and fourth defendants had had prescriptive possession of the parcels of land numbered 2, 5, and 6 in the plaint; and (2) whether the deed P 1 in favour of the plaintiffs prevailed over deed D 8 in favour of the fourth defendant and the wife of the third defendant by reason of prior registration. It is only the second question that we are now concerned with. The parcels of land dealt with by the two deeds referred to above are those numbered 1, 3, and 4 in the plaint.

These lands belonged to Sanchi Appu and his wife Ungo. After Sanchi Appu's death, Ungo, by deed D 8 dated November 25, 1898, conveyed a half share of the lands to the fourth defendant and the wife of the third defendant, and, after the death of Ungo, Sirimal, one of the four children of Sanchi Appu and Ungo, conveyed by deed P 1 dated January 18, 1912, a fourth share of the lands to the plaintiffs. Deed P 1 was registered on January 22, 1912, while deed D 8 was registered on August 7, 1912. It has been argued that D 8 could not take priority over P 1, because as a consequence of the execution of D 8 by Ungo her share did not devolve on her heirs, and Sirimal had therefore nothing to convey; but this argument, if sound, would nullify altogether the operation of the Registration Ordinance. The policy and effect of our law of registration are such that the mere fact that a person who has conveyed property had no title to it is insufficient to deprive the conveyance of priority by reason of prior registration. Of course, the ordinary illustration is in the case of a person who, having already conveyed to one person certain property, purports to convey the same property by means of another deed to another person; but a more apposite illustration may be stated as follows. A conveys a parcel of land to B, and then executes a deed purporting to convey the same land to C. C, who at this stage has no title whatever to the land, executes a conveyance of it in favour of D. The deed in favour of D, surely, by registration, would have priority over that in favour of B. Sirimal in the present case was exactly in the same position as C in the above illustration. But for the deed by Ungo he would have had title to the property in claim, just as much as C would have had title to the property referred to in the illustration, but for the deed executed by A in favour of B ; and if a conveyance by C could by prior registration gain priority over the conveyance by A in favour of B, I see no reason why a conveyance by Sirimal, who, but for the conveyance by Ungo, would have become entitled to the property, should not similarly by prior registration have priority over the deed by Ungo. The case appears to be covered by authority. In the case of *Punchirala v. Appuhamy* [1] Lawrie J. observed : " If a person by a subsequent deed duly registered

[1] *(1900) 7 N. L. R. 102, 105.*

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could defeat a prior unregistered deed granted by himself, surely his heirs or administrators could defeat a prior deed executed by the deceased." It was not contested that it was well-settled law that an administrator's conveyance might by reason of prior registration defeat a conveyance by the intestate. Now, the administrator is only the intermediary to convey the property of the intestate to his heirs. It is only such property as is heritable that vests in him, and it is therefore reasonable to suppose that an heir might deal with such property, subject, of course, to the exigencies of administration, in any manner that the administrator might deal with it, especially as with us it is now accepted as settled law that a conveyance of property by the heirs of a deceased person without the concurrence or assent of the administrator is valid, subject to the right of the administrator to deal with the property for purposes of administration (see *Silva v. Silva* [1]). The principles enunciated in the case of *Warburton v. Loveland* [2] cited by the appellants' counsel appear to me to support the view I have expressed above. In my opinion deed P 1 has priority over deed D 8.

DE SAMPAYO A.J.—

There are two appeals in this case. The appeal numbered 365A is taken by the plaintiffs in respect of the lands Nos. 2, 5, and 6, with regard to which the District Judge has held that the third and fourth defendants have become entitled by prescriptive possession to the exclusion of their co-heir Sirimalhamy, who sold one-fourth share to the plaintiffs. The District Judge, so far as the question of prescription is concerned, is clearly right, and I think that the appeal No. 365A should be dismissed with costs.

The other appeal, No. 365B, is taken by the third defendant Carolis and his wife Nonnohamy with regard to the lands Nos. 1, 3, and 4, of which the District Judge has declared the plaintiffs to be entitled to a one-fourth share. The contention between the parties to that appeal arises under the following circumstances. Sanchi Appu and his wife Ungohamy were in community of property entitled to the said lands. They died intestate leaving four children, viz., first defendant, third defendant, fourth defendant, and one Sirimalhamy. The plaintiffs purchased from Sirimalhamy upon deed dated January 18, 1912, and registered on January 22, 1912, a fourth share of the said lands as belonging to her by right of inheritance from her parents. But Ungohamy had, after the death of her husband, gifted her half share to the fourth defendant and Nonnohamy, wife of the third defendant, by deed dated November 25, 1898, but registered only on August 7, 1912, and these defendants accordingly claim that half share by virtue of the deed of gift, thus allowing to the plaintiffs by right of purchase from Sirimalhamy only an eighth share, and not a fourth share as claimed by them.

[1] *(1907) 10 N. L. R. 234.*

[2] *(1831) 2 Dow & Clark 480.*

The District Judge upheld the claim of the plaintiffs on the ground of prior registration of their deed. The appeal having come before Wood Renton A.C.J. and myself, the question as to the effect of prior registration of the deed from Sirimalhamy was referred to a bench of three Judges. There is no question that under the law relating to registration the competing deeds must proceed from the same source, nor, on the other hand, is there any question that they need not be granted by the same person. The only point on which I entertained a doubt was whether, when the owner has disposed of his entire interest in a land during his lifetime, a purchaser from an heir as distinguished from an administrator or executor can create any title by the process of registration. An administrator or executor is for this purpose the same person as the deceased. But, in the case put, is a so-called heir in the same position? A person is an heir only in respect of the property left by the deceased at his death, and is not his representative to any larger extent. It was sought at the argument of this appeal to meet the point by the suggestion that a person who disposes of his property has still a right or power, which would descend to his heirs, to create a new title by a subsequent deed duly registered. The truth is that such title is created, not because any right or power is still left in the previous owner, but because the law intervenes and protects an innocent purchaser who has paid consideration. Then the question is whether, just as the owner who has ceased to be owner may enable an innocent purchaser to maintain his position against a claimant upon an unregistered deed, an heir may do the same, though he has not inherited the particular land. As I have already stated, the difficulty I felt was not as to the heir having no title to convey, but as to his being an heir at all in respect of property which has been alienated by his ancestor. It is not necessary for me to examine all the authorities on the subject of registration. The scope and object of all registration laws are well known, and are practically the same in all countries. It is sufficient to say that, so far as I know, in all the cases in which an heir's deed has been allowed to prevail, the disposal by the ancestor has been, not of his full ownership, but of some limited interest, such as a mortgage or a lease, so that in these cases the heir did in fact inherit in respect of the particular land. But I think the real answer to the question involved is to be found in the view suggested by the House of Lords in *Warburton v. Loveland* [1] cited to us; that is to say, in the matter of registration, the transfer of what would have been the right and title of the person granting the second conveyance but for the prior unregistered deed prevails. In that case there was an unregistered settlement by which a wife had settled upon her children her life interest in a certain term for years. But for this settlement the life interest would have vested in the husband by matrimonial

[1] *(1831) 2 Dow & Clark 480.*

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right. The husband subsequently sold this life interest to a third party, who registered his conveyance. The House of Lords, after pointing out the nature and meaning of the kind of right conveyed by a second deed as above indicated, dealt with the point thus: "It has been further argued that the effect of the marriage settlement was to prevent the husband from having any right to grant the lease of 1800 at the time it was made, for that the wife's right was effectually conveyed as between her husband and herself by the deed of 1779; that she had no interest in her at the time she married; that she could therefore pass no interest to her husband by the marriage; that the husband consequently never had any right, and therefore could convey none to the lessee. Now, it may be admitted, that as against the husband, who was party to the deed of 1779, that deed was valid; it may be admitted also that he could not of right exercise any power over the property inconsistent with that deed; but as by the non-registration of that deed the grantees suffered him, as to the world at large, to have the appearance of right, neither they, nor any claiming under them, are at liberty to set up the deed in opposition to the persons who have been deluded by the appearance of right in the husband. This argument therefore, which would be good against the husband himself, cannot be heard from the parties claiming under the settlement against his grantee for a valuable consideration."

Looking at the case of an heir from the point of view suggested in the above decision, it is not necessary for us to consider the argument that, in the case of a small estate such as this, the heirs are in all respects in the same position as an administrator, for according to that view the heirs would be acting, not as representatives of the deceased at all, but in their own right, and would be selling what would in fact have come to them but for the deceased's unregistered deed, of which the person dealing with them has no notice. Accordingly, I agree that in this case the conveyance by Sirimalhamy to the plaintiffs prevails over the deed of gift by Ungohamy in favour of the appellants. The appeal No. 365 B therefore also fails, and should be dismissed with costs.

Appeal dismissed.